



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/156206

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 22, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 08, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Julie Wieck

Sheboygan County Department of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner received FS benefits of \$180/month for February and March, 2014. This was based on SSI of \$804.78/month and a shelter deduction based on rent expense of \$500/month and a utility standard of \$450/month.

3. On March 18, 2014, the agency received an alert to review the Petitioner's FS case. The alert indicated that the Petitioner was listed on his parents' case as a household member. Information on his parents' case indicated his parents gave him \$300/month.
4. On March 19, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would be reduced from \$180 to \$30/month due to the agency removing the Petitioner's \$500/month rent expense.
5. On March 22, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.
6. Upon further review on March 25, 2014, the agency noted that the Petitioner submitted a statement from his mother as his landlord. The statement indicates the Petitioner is a tenant in the lower apartment of her home and he pays a monthly rent expense of \$500 which includes water, electric, heat, internet access, cable TV and parking.
7. On or about April 8, 2014, the Petitioner provided a Shared Food & Shelter Expense Statement to the agency on which it is reported that the Petitioner's \$500 shelter expense consists of \$250 rent/month and the remainder of rent covers the electric, heat, internet, phone, and cable TV.

### **DISCUSSION**

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$152 per month for a two-person household. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

Prior to April, 2014, the agency allowed a shelter expense deduction of \$500/month and a utility standard of \$450/month for the Petitioner. In verifying information about the Petitioner's case, the agency learned that the Petitioner's rent expense of \$500/month includes his utilities. Because utilities are included in the \$500 rent payment, the Petitioner was not entitled to receive both the full shelter expense of \$500/month plus a utility standard of \$450/month.

The agency concedes that it incorrectly reduced the Petitioner's rent expense to \$0 which resulted in a decrease in his benefits to \$30/month effective April 1, 2014. At the hearing, the agency testified that it received the Petitioner's additional information regarding his rent expense of \$250/month plus utilities. The agency testified that it had not acted on this information because of the pending appeal. I note that the agency was not required to wait to act on this information pending the hearing. Thus, I asked the agency to make the calculations of what the Petitioner's benefit should be based on the \$250/month rent expense plus the proper utility standard. The agency forwarded the budget screen based on those reported expenses after the hearing. The corrected budget screen indicates the Petitioner's shelter deduction is \$373.61 based on rent expense of \$250 and a utility standard of \$450. Thus, the Petitioner's FS allotment based on this information is \$105/month.

The Petitioner testified that nothing has changed with regard to the rent he pays each month so that he believes the amount of benefits should not change. While the amount of rent he pays has not changed, the agency is properly applying the deduction differently based on new information it obtained that utilities are part of the rent expense. When the rent expense includes utilities, the Petitioner is not entitled to a deduction that includes the full rent expense *plus* the utility standard. Essentially, the Petitioner was

receiving a double deduction for utilities. His shelter deduction was based on rent expense of \$500/month plus utility expenses of \$450/month for total shelter costs of \$950/month. I conclude, based on the evidence, that the agency is now properly calculating Petitioner's shelter expense as \$250/month in rent plus a utility standard of \$450/month for total shelter costs of \$650/month.

As noted earlier, the agency received the landlord's statement on March 25, 2014 and the Shared Food and Shelter Expense Statement on or about April 8, 2014. The agency was not required to wait for the hearing to act on that information and should have acted on that information within 10 days of receipt of the information. This would have impacted the Petitioner's benefits effective May 1, 2014.

In summary, the agency correctly asserts that the Petitioner is entitled to a shelter deduction based on \$250/month rent plus a utility standard. The change in benefits should be effective May 1, 2014 based on verification the agency received on or about April 8, 2014.

### **CONCLUSIONS OF LAW**

The agency correctly asserts that the Petitioner is entitled to a shelter deduction based on \$250/month rent plus a utility standard of \$450/month. The change in benefits should be effective May 1, 2014 based on verification the agency received on or about April 8, 2014.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to re-calculate the Petitioner's FS benefits effective May 1, 2014 based on a rent expense of \$250/month and a utility standard of \$450/month. This action shall be completed within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of May, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 13, 2014.

Sheboygan County Department of Human Services  
Division of Health Care Access and Accountability